

AMENDED IN SENATE AUGUST 25, 1997

AMENDED IN SENATE JULY 29, 1997

AMENDED IN SENATE JULY 16, 1997

AMENDED IN ASSEMBLY MAY 23, 1997

AMENDED IN ASSEMBLY MAY 12, 1997

AMENDED IN ASSEMBLY APRIL 8, 1997

AMENDED IN ASSEMBLY MARCH 31, 1997

AMENDED IN ASSEMBLY MARCH 12, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 76**

**Introduced by Assembly Member Miller**

December 18, 1996

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An act to amend Sections 1368 and 1375 of, and to add Sections 1363.1 and 1375.1 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 76, as amended, Miller. Common interest developments.

(1) Provisions of the Davis-Stirling Common Interest Development Act, repealed as of January 1, 1997, required a prospective managing agent of a common interest development to provide a written statement to the board of directors of the association of the development containing

prescribed information regarding the owners or general partners of the managing agent. Among other things, that information—~~must~~ *was required to* include the status of any professional licenses, certifications, or designations held by those persons.

This bill would reenact these provisions. The bill would also require that the managing agents provide information specifying the dates that any professional licenses, certifications, or designations held are valid, rather than the status of those licenses, certifications, or designations. *It also would specify that a professional common interest development manager, rather than a certified property manager or professional association manager, is included in the certifications or designations required to be included in the statement.*

(2) Existing law requires the owner of a separate interest in a common interest development to provide prescribed documents relating to operation of the common interest development to the prospective purchaser of the separate interest, except as specified.

This bill would require the owner to provide the prospective purchaser with a copy of the preliminary list of defects provided to each member of the association pursuant to existing law, except as specified, and specified information regarding settlement agreements regarding damage to common areas or separate interests. The bill would require the list of defects to include a specified statement.

(3) Existing law requires the board of directors of the association of a common interest development to provide each member of the association who appears on the association records with a prescribed written notice not later than 30 days prior to the filing of any civil action by the association against a declarant or other developer of the common interest development for, among other things, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.



This bill would require the association to, in writing, inform only the members whose names appear on the association records of prescribed information as soon as is reasonably practicable after the resolution of a dispute, as specified, regarding alleged damage to prescribed common areas, alleged damage to separate interests that the association is obligated to maintain or repair, or for alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

(4) Existing law provides specific requirements for the association to meet before it commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the development. Existing law requires, in a certain situation, the association's board of directors to hold a meeting of the association members and provide a written notice to each member that specifies, among other things, the options that are available to address the problems, including the filing of a civil action.

This bill would also require the notice to include a statement of the various, reasonably foreseeable alternatives to pay for those options.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1363.1 is added to the Civil Code,  
2 to read:

3 1363.1. (a) A prospective managing agent of a  
4 common interest development shall provide a written  
5 statement to the board of directors of the association of a  
6 common interest development as soon as practicable, but  
7 in no event more than 90 days, before entering into a  
8 management agreement which shall contain all of the  
9 following information concerning the managing agent:

10 (1) The names and business addresses of the owners or  
11 general partners of the managing agent. If the managing  
12 agent is a corporation, the written statement shall include

1 the names and business addresses of the directors and  
2 officers and shareholders holding greater than 10 percent  
3 of the shares of the corporation.

4 (2) Whether or not any relevant licenses such as  
5 architectural design, construction, engineering, real  
6 estate, or accounting have been issued by this state and  
7 are currently held by the persons specified in paragraph  
8 (1). If a license is currently held by any of those persons,  
9 the statement shall contain the following information:

10 (A) What license is held.

11 (B) The dates the license is valid.

12 (C) The name of the licensee appearing on that  
13 license.

14 (3) Whether or not any relevant professional  
15 certifications or designations such as architectural design,  
16 construction, engineering, real property management, or  
17 accounting are currently held by any of the persons  
18 specified in paragraph (1), including, but not limited to,  
19 ~~certified property manager or professional association a~~  
20 *professional common interest development* manager. If  
21 any certification or designation is held, the statement  
22 shall include the following information:

23 (A) What the certification or designation is and what  
24 entity issued it.

25 (B) The dates the certification or designation is valid.

26 (C) The names in which the certification or  
27 designation is held.

28 (b) As used in this section, a “managing agent” is a  
29 person or entity, ~~who~~ *who*, for compensation or, in  
30 expectation of compensation, exercises control over the  
31 assets of a common interest development. A “managing  
32 agent” does not include either of the following:

33 (1) A full-time employee of the association.

34 (2) Any regulated financial institution operating  
35 within the normal course of its regulated business  
36 practice.

37 SEC. 2. Section 1368 of the Civil Code is amended to  
38 read:

39 1368. (a) The owner of a separate interest, other than  
40 an owner subject to the requirements of Section 11018.6

1 of the Business and Professions Code, shall, as soon as  
2 practicable before transfer of title to the separate interest  
3 or execution of a real property sales contract therefor, as  
4 defined in Section 2985, provide the following to the  
5 prospective purchaser:

6 (1) A copy of the governing documents of the common  
7 interest development.

8 (2) If there is a restriction in the governing documents  
9 limiting the occupancy, residency, or use of a separate  
10 interest on the basis of age in a manner different from that  
11 provided in Section 51.3, a statement that the restriction  
12 is only enforceable to the extent permitted by Section  
13 51.3 and a statement specifying the applicable provisions  
14 of Section 51.3.

15 (3) A copy of the most recent documents distributed  
16 pursuant to Section 1365.

17 (4) A true statement in writing from an authorized  
18 representative of the association as to the amount of the  
19 association's current regular and special assessments and  
20 fees, as well as any assessments levied upon the owner's  
21 interest in the common interest development which are  
22 unpaid on the date of the statement. The statement shall  
23 also include true information on late charges, interest,  
24 and costs of collection which, as of the date of the  
25 statement, are or may be made a lien upon the owner's  
26 interest in a common interest development pursuant to  
27 Section 1367.

28 (5) A copy of the preliminary list of defects provided  
29 to each member of the association pursuant to Section  
30 1375, unless the association and the builder subsequently  
31 enter into a settlement agreement or otherwise resolve  
32 the matter and the association complies with Section  
33 1375.1. Disclosure of the preliminary list of defects  
34 pursuant to this paragraph shall not waive any privilege  
35 attached to the document. The preliminary list of defects  
36 shall also include a statement that a final determination  
37 as to whether the list of defects is accurate and complete  
38 has not been made.

39 (6) A copy of the information provided for in Section  
40 1375.1.

(7) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (7), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 3. Section 1375.1 is added to the Civil Code, to read:

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is

1 integrally related to, damage to the common areas or  
2 separate interests that the association is obligated to  
3 maintain or repair, where the defects giving rise to the  
4 dispute have not been corrected, the association shall, in  
5 writing, inform only the members of the association  
6 whose names appear on the records of the association that  
7 the matter has been resolved, by settlement agreement  
8 or other means, and disclose all of the following:

9 (1) A general description of the defects, as of the date  
10 of the disclosure, which the association reasonably  
11 believes will be corrected or replaced, and the damage  
12 arising from defects which the association reasonably  
13 believes will be repaired.

14 (2) A good faith estimate, as of the date of the  
15 disclosure, of when the association believes that the  
16 damage identified in paragraph (1) will be repaired or  
17 replaced. The association may state that the estimate may  
18 be modified.

19 (3) The status of the claims for defects in the design of  
20 construction of the common interest development which  
21 where not identified in paragraph (1) whether expressed  
22 in a preliminary list of defects sent to each member of the  
23 association or otherwise claimed and disclosed to the  
24 members of the association.

25 (b) Nothing in this section shall preclude an  
26 association from amending the disclosures required  
27 pursuant to subdivision (a), and any amendments shall  
28 supersede any prior conflicting information disclosed to  
29 the members of the association and shall retain any  
30 privilege attached to the original disclosures.

31 (c) Disclosure of the information required pursuant to  
32 subdivision (a) or authorized by subdivision (b) shall not  
33 waive any privilege attached to the information.

34 SEC. 4. Section 1375 of the Civil Code is amended to  
35 read:

36 1375. (a) Before an association commences an action  
37 for damages against a builder of a common interest  
38 development based upon a claim for defects in the design  
39 or construction of the common interest development, all

1 of the requirements of subdivisions (b) to (g), inclusive,  
2 shall be met, except as otherwise provided in this section.

3 (b) (1) The association shall give written notice to the  
4 builder against whom the claim is made. This notice shall  
5 include all of the following:

6 (A) A preliminary list of defects.

7 (B) A summary of the results of a survey or  
8 questionnaire distributed to homeowners to determine  
9 the nature and extent of defects, if this survey has been  
10 conducted or a questionnaire has been distributed.

11 (C) Either a summary of the results of testing  
12 conducted to determine the nature and extent of defects  
13 or the actual test results, if this testing has been  
14 conducted.

15 (2) The association's notice shall, upon delivery of the  
16 notice to the builder, commence a period of time not to  
17 exceed 90 days, unless the association and builder agree  
18 to a longer period, during which the association and  
19 builder shall either, in accordance with the requirements  
20 of this section, attempt to settle the dispute or attempt to  
21 agree to submit it to alternative dispute resolution.

22 (3) (A) Except as provided in this section and  
23 notwithstanding any other provision of law, the notice by  
24 the association shall, upon mailing, toll all statutory and  
25 contractual limitations on actions against all parties who  
26 may be responsible for the damages claimed, whether  
27 named in the notice or not, including claims for  
28 indemnity applicable to the claim, for a period of 150 days  
29 or a longer period agreed to in writing by the association  
30 and the builder.

31 (B) At any time, the builder may give written notice  
32 to cancel the tolling of the statute of limitations provided  
33 in this section. Upon delivery of this written cancellation  
34 notice, the association shall be relieved of any further  
35 obligations to satisfy the requirements of this subdivision  
36 and subdivisions (c) to (e), inclusive. The tolling of all  
37 applicable statutes of limitations shall cease 60 days after  
38 the written notice of cancellation by the builder is  
39 delivered to the association.



1 (c) (1) Within 25 days of the date the association  
2 delivers the notice required by subdivision (b), the  
3 builder may request in writing to meet and confer with  
4 the board of directors of the association, and to inspect the  
5 project and conduct testing, including testing that may  
6 cause physical damage to any property in the  
7 development, in order to evaluate the claim. If the  
8 builder does not make a timely request to meet and  
9 confer with the board of directors of the association, or to  
10 conduct inspection and testing, the association shall be  
11 relieved of any further obligations to satisfy the  
12 requirements of this subdivision and subdivisions (d) and  
13 (e). Unless the builder and association otherwise agree,  
14 the meeting shall take place no later than 10 days from the  
15 date of the builder's written request, at a mutually  
16 agreeable time and place. The meeting shall be subject to  
17 subdivision (g) of Section 1363. The discussions at the  
18 meeting are privileged communications and are not  
19 admissible in evidence in any civil action, unless the  
20 association and builder consent to their admission. The  
21 meeting shall be for the purpose of discussing all of the  
22 following:

- 23 (A) The nature and extent of the claimed defects.  
24 (B) Proposed methods of repair, to the extent there is  
25 sufficient information.  
26 (C) Proposals for submitting the dispute to alternative  
27 dispute resolution.  
28 (D) Requests from the builder to inspect the project  
29 and conduct testing.

30 (2) If the builder requests in writing to meet and  
31 confer with the board of directors of the association  
32 pursuant to paragraph (1) of this subdivision, the builder  
33 shall deliver the notice provided by the association to the  
34 builder pursuant to subdivision (b) to any insurer that has  
35 issued a policy to the builder which imposes upon the  
36 insurer a duty to defend the insured or indemnify the  
37 insured for losses resulting from the defects identified in  
38 the notice required by subdivision (b). The notice by the  
39 builder shall, upon receipt, impose upon that insurer any  
40 obligation which would be imposed under the terms of

1 the policy if the insured had been served with a summons  
2 and complaint for damages. The builder shall inform the  
3 association when the builder delivers the notice to each  
4 insurer pursuant to this paragraph.

5 (d) (1) If the association conducted inspection and  
6 testing prior to the date it sent the written notice  
7 pursuant to subdivision (b), the association shall, at the  
8 earliest practicable date after the meeting held pursuant  
9 to subdivision (c), make available for inspection and  
10 testing at least those areas inspected or tested by the  
11 association. The inspection and testing shall be completed  
12 within 15 days from the date the association makes these  
13 areas available for inspection and testing, unless the  
14 association and builder agree to a longer period. If the  
15 builder does not timely complete the inspection and  
16 testing, the association shall be relieved of any further  
17 obligations to satisfy the requirements of this subdivision  
18 and subdivision (e). The manner in which the inspection  
19 and testing shall be conducted, and the extent of any  
20 inspection and testing to be conducted beyond that  
21 which was conducted by the association prior to sending  
22 the notice, shall be set by agreement of the association  
23 and builder.

24 (2) The builder shall pay all costs of inspection and  
25 testing that is requested by the builder, shall restore the  
26 property to the condition which existed immediately  
27 prior to the testing, and shall indemnify the association  
28 and owner of the separate interest for any damages  
29 resulting from the testing.

30 (3) Interior inspections of occupied separate interests  
31 and destructive testing of any interior of a separate  
32 interest shall be conducted in accordance with the  
33 governing documents of the association, unless otherwise  
34 agreed to by the owner of the separate interest. If the  
35 governing documents of the association do not provide  
36 for inspection or testing of separate interests, this  
37 inspection or testing shall be conducted in a manner and  
38 at a time agreed to by the owner of the separate interest.

39 (4) The results of the inspection and testing shall not  
40 be inadmissible in evidence in any civil action solely

1 because the inspection and testing was conducted  
2 pursuant to this section.

3 (e) (1) Within 30 days of the completion of inspection  
4 and testing or within 30 days of a meeting held pursuant  
5 to subdivision (c) if no inspection and testing is  
6 conducted pursuant to subdivision (d), the builder shall  
7 submit to the association all of the following:

8 (A) A request to meet with the board to discuss a  
9 written settlement offer.

10 (B) A written settlement offer, and a concise  
11 explanation of the specific reasons for the terms of the  
12 offer. This offer may include an offer to submit the  
13 dispute to alternative dispute resolution.

14 (C) A statement that the builder has access to  
15 sufficient funds to satisfy the conditions of the settlement  
16 offer.

17 (D) A summary of the results of testing conducted for  
18 the purpose of determining the nature and extent of  
19 defects, if this testing has been conducted, unless the  
20 association provided the builder with actual test results  
21 pursuant to subdivision (b), in which case the builder  
22 shall provide the association with actual test results.

23 (2) If the builder does not timely submit the items  
24 required by this subdivision, the association shall be  
25 relieved of any further obligations to satisfy the  
26 requirements of this subdivision only.

27 (3) No less than 10 days after the builder submits the  
28 items required by this paragraph, the builder and the  
29 board of directors of the association shall meet and confer  
30 about the builder's settlement offer, including any offer  
31 to submit the dispute to alternative dispute resolution.

32 (f) (1) At any time after the notice required by  
33 subdivision (b) is delivered to the builder, the association  
34 and builder may agree in writing to modify or excuse any  
35 of the time periods or other obligations imposed by this  
36 section.

37 (2) Except for the notice required pursuant to  
38 subdivision (g), all notices, requests, statements, or other  
39 communications required pursuant to this section shall be  
40 delivered by one of the following:

1 (A) By first-class registered or certified mail, return  
2 receipt requested.

3 (B) In any manner in which it is permissible to serve  
4 a summons pursuant to Section 415.10 or 415.20 of the  
5 Code of Civil Procedure.

6 (g) If the board of directors of the association rejects  
7 a settlement offer presented at the meeting held  
8 pursuant to subdivision (e), the board shall comply with  
9 the requirements of paragraph (1) of this subdivision. If  
10 the association is relieved of its obligations to satisfy the  
11 requirements of subdivisions (a) to (e), inclusive, before  
12 all those requirements are satisfied, the association shall  
13 comply with the requirements of paragraph (2) of this  
14 subdivision. Under no circumstances shall the association  
15 be required to comply with both paragraph (1) and  
16 paragraph (2) of this subdivision.

17 (1) (A) If the association's board of directors rejects a  
18 settlement offer presented at the meeting held pursuant  
19 to subdivision (e), the board shall hold a meeting open to  
20 each member of the association. The meeting shall be  
21 held no less than 15 days before the association  
22 commences an action for damages against the builder.

23 (B) No less than 15 days before this meeting is held, a  
24 written notice shall be sent to each member of the  
25 association specifying all of the following:

26 (i) That a meeting will take place to discuss problems  
27 that may lead to the filing of a civil action, and the time  
28 and place of this meeting.

29 (ii) The options that are available to address the  
30 problems, including the filing of a civil action and a  
31 statement of the various alternatives that are reasonably  
32 foreseeable by the association to pay for those options and  
33 whether these payments are expected to be made from  
34 the use of reserve account funds or the imposition of  
35 regular or special assessments, or emergency assessment  
36 increases.

37 (iii) The complete text of any written settlement offer,  
38 and a concise explanation of the specific reasons for the  
39 terms of the offer submitted to the board pursuant to  
40 paragraph (1) of subdivision (e), received from the

1 builder and of any offer by the builder to submit the  
2 dispute to alternative dispute resolution.

3 (iv) The preliminary list of defects provided by the  
4 association to the builder pursuant to subdivision (b) and  
5 a list of any other documents provided by the association  
6 to the builder pursuant to subdivision (b), and  
7 information about where and when members of the  
8 association may inspect those documents.

9 (C) The builder shall pay all expenses attributable to  
10 sending the settlement offer and any offer for alternative  
11 dispute resolution to all members of the association. The  
12 builder shall also pay the expense of holding the meeting,  
13 not to exceed three dollars (\$3) per association member.

14 (D) The discussions at the meeting and the contents  
15 of the notice and the items required to be specified in the  
16 notice pursuant to subparagraph (B), are privileged  
17 communications and are not admissible in evidence in  
18 any civil action, unless the association consents to their  
19 admission.

20 (E) Compliance with this paragraph shall excuse the  
21 association from satisfying the requirements of Section  
22 1368.4.

23 (2) If the association is relieved of its obligations to  
24 satisfy the requirements of subdivisions (a) to (e),  
25 inclusive, before all those requirements have been  
26 satisfied, the association may commence an action for  
27 damages against the builder 30 days after sending a  
28 written notice to each member specifying all of the  
29 following:

30 (A) The preliminary list of defects provided by the  
31 association to the builder pursuant to subdivision (b), and  
32 a list of any other documents provided by the association  
33 to the builder pursuant to subdivision (b), and  
34 information about where and when members of the  
35 association may inspect those documents.

36 (B) The options, including civil actions, that are  
37 available to address the problems.

38 (C) A statement that if 5 percent of the members of  
39 the association request a special meeting of the members  
40 to discuss the matter within 15 days of the date the notice

1 is mailed or delivered to the members of the association,  
2 a meeting of the members shall be held, unless governing  
3 documents of the association provide for a different  
4 procedure for calling a special meeting of the members,  
5 in which case, the statement shall inform the members of  
6 that procedure.

7 (D) Compliance with this paragraph shall excuse the  
8 association from satisfying the requirements of Section  
9 1368.4.

10 (h) (1) The only method of seeking judicial relief for  
11 the failure of the association to comply with this section  
12 shall be the assertion, as provided for in this subdivision,  
13 of a procedural deficiency to an action for damages by the  
14 association against the builder after such an action has  
15 been filed. A verified application asserting such a  
16 procedural deficiency shall be filed with the court no later  
17 than 90 days after the answer to the plaintiff's complaint  
18 has been served, unless the court finds that extraordinary  
19 conditions exist.

20 (2) Upon the verified application of the association or  
21 the builder alleging substantial noncompliance with this  
22 section, the court shall schedule a hearing within 21 days  
23 of the application to determine whether the association  
24 or builder has substantially complied with this section.  
25 The issue may be determined upon affidavits or upon oral  
26 testimony, in the discretion of the court.

27 (3) (A) If the court finds that the association did not  
28 substantially comply with this section, the court shall stay  
29 the action for up to 90 days to allow the association to  
30 establish substantial compliance. The court shall set a  
31 hearing within 90 days to determine substantial  
32 compliance by the association. At any time, the court  
33 may, for good cause shown, extend the period of the stay  
34 upon application of the association.

35 (B) If, within the time set by the court pursuant to this  
36 section, the association has not established that it has  
37 substantially complied with this section, the court shall  
38 determine if, in the interest of justice, the action should  
39 be dismissed without prejudice, or if another remedy  
40 should be fashioned. Under no circumstances shall the

1 court dismiss the action with prejudice as a result of the  
2 association's failure to substantially comply with this  
3 section. In determining the appropriate remedy, the  
4 court shall consider the extent to which the builder has  
5 complied with this section.

6 (C) If the alleged noncompliance of either the builder  
7 or the association resulted from the unreasonable  
8 withholding of consent for inspection or testing by an  
9 owner of a separate interest, it shall not be considered  
10 substantial noncompliance, provided that the party  
11 alleged to be out of compliance did not encourage the  
12 withholding of consent.

13 (4) If the court finds that the builder did not pay all of  
14 the costs of inspection and testing pursuant to paragraph  
15 (3) of subdivision (a), or that the builder did not pay its  
16 required share of the costs of holding the meeting and of  
17 all expenses attributable to sending the settlement offer  
18 pursuant to subparagraph (C) of paragraph (1) of  
19 subdivision (g) of this section, the court shall order the  
20 builder to pay any deficiencies within 30 days, with  
21 interest, and any additional remedy which the court  
22 determines, in the interest of justice, should be fashioned.

23 (i) As used in this section:

24 (1) "Association" shall have the same meaning as  
25 defined in subdivision (a) of Section 1351.

26 (2) "Builder" means the declarant, as defined in  
27 subdivision (g) of Section 1351.

28 (D) "Common interest development" shall have the  
29 same meaning as in subdivision (c) of Section 1351,  
30 except that it shall not include developments or projects  
31 with less than 20 units.